

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds as follows:

For the reasons expressed below, the Preliminary Hearing Order of Administrative Law Judge Robert H. Foerschler, dated November 14, 1994, should be affirmed.

(1) Claimant initially injured his left hip while working for the respondent on April 8, 1994. Claimant was taken off work and received conservative treatment until May 2, 1994, when claimant requested he be released to return to work because he was not receiving any income or benefits. After May 2, claimant worked for approximately ten (10) days and was then terminated for failing to report to work and failing to report his absence. Sometime in May 1994, claimant obtained employment applying drywall tape and mud with an employer who accommodated the left hip injury. On July 29, 1994, claimant experienced a sharp pain in his left hip while entering his trailer home. As a result of the increased symptomatology, claimant seeks additional medical treatment and benefits from the respondent.

Claimant testified his pain never resolved after his accident of April 8, 1994. Claimant's new employer testified that claimant limped when he began working for him in May 1994, and continued to limp through July 1994, when claimant experienced the severe flare-up of symptoms. Although additional evaluation may shed additional light upon the issue, at this time the medical evidence supports the finding of the Administrative Law Judge that claimant's condition is a flare-up of symptomatology related to his accidental injury of April 8, 1994. Therefore, the Order of Administrative Law Judge authorizing medical treatment to obtain an MRI and report is affirmed.

(2) The Appeals Board does not have the authority or jurisdiction at this juncture to address the issue whether claimant is temporarily and totally disabled for the period in question. This ruling comports with many of our earlier decisions.

The Legislature empowered the Appeals Board under K.S.A. 44-534a to review preliminary findings pertaining to the following: (1) Whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice is given or claim timely made, and; (4) whether certain defenses apply.

The issue of temporary total disability benefits propounded by claimant in this proceeding is not an issue that may be reviewed on appeal from a preliminary order under the provisions of K.S.A. 44-534a, because at this juncture of the proceeding, the issue is one of nature and extent of disability. Further, the Appeals Board cannot now review this preliminary finding under the provisions of K.S.A. 44-551, because the Administrative Law Judge has not exceeded his jurisdiction or authority in ruling upon questions of temporary total disability compensation. The preliminary hearing statute, K.S.A. 44-534a, specifically empowers the Administrative Law Judge to make those rulings.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that it lacks jurisdiction to review the issue of temporary total disability benefits and the preliminary finding that claimant is entitled to medical treatment to obtain an MRI evaluation and medical report should be, and hereby is, affirmed. Therefore, the Order of Administrative Law Judge Robert H. Foerschler entered in this proceeding on November 14, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Derek Chappell, Attorney at Law, Ottawa, KS
 Timothy G. Lutz, Attorney at Law, Overland Park, KS
 Robert H. Foerschler, Administrative Law Judge
 George Gomez, Director